

## **EXHIBIT 3**

**November 6, 2023**

**VIA E-MAIL**

John Hamm, Commissioner  
Mary-Coleman Roberts, General Counsel  
Alabama Department of Corrections  
301 South Ripley Street  
Montgomery, AL 36104  
John.Hamm@doc.alabama.gov  
MaryColeman.Roberts@doc.alabama.gov

Cc: Martin Menefee, menefeemartin@gmail.com

Dear Commissioner Hamm and General Council Roberts,

We write to inform you of the findings of our investigation into the conditions of confinement at Limestone correctional facility for my client, Robert Earl Council, AIS: 00181418. We have concluded that the Alabama Department of Corrections and Lt. Jeremy Pelzer, a Limestone correctional facility employee, among others, are retaliating against Mr. Council, attempting to assault or murder him, and to keep him in solitary confinement.

Mr. Council's life is currently in grave and urgent danger so long as he remains at a facility where Lt. Pelzer is a supervisory officer. Accordingly, this letter is to inform you that we are prepared to file a Motion for Temporary Restraining Order and Preliminary Injunction in federal court, seeking an injunction for the following relief, unless it is provided by ADOC:

1. transfer Mr. Council away from Limestone and to any other ADOC facility;
2. release Mr. Council from solitary confinement; and
3. suspend Lt. Pelzer pending an internal investigation and referral to criminal prosecution by state or federal authorities.
4. Mr. Council also requests that ADOC and official capacity ADOC employees waive formal service and agree to accept service, via email to ADOC's general counsel, of a complaint and motion addressing these matters.

Lt. Pelzer's threat to Mr. Council and the need to transfer Mr. Council away from Limestone is well documented. Mr. Council, through his attorney David Gespass, complained of retaliation and violence by Lt. Pelzer in a letter to the Commissioner and other top ADOC officials on April 10, 2023, January 9, 2020, and November 18, 2019. Mr. Council is known as a prolific advocate for prisoners' rights and has filed several lawsuits and grievances against Lt. Pelzer and other Limestone officials for retaliation, violence, and unjustified use of solitary confinement. ADOC, including the ADOC segregation board, previously recommended transferring Mr. Council away from Limestone to protect him from retaliatory violence by Limestone officers.

While we are ready to litigate this matter in federal court, we believe that it would be in the best interests of all parties at this time to resolve these violations without court intervention.

Due to the urgent and credible threat to Mr. Council's life, please provide the requested relief by **Wednesday, November 8, 2023, at 7:00 p.m.**

If you decline to provide the requested relief by Wednesday, November 8, 2023 at 7:00 p.m., then we will file a Complaint and Motion for Temporary Restraining Order and Preliminary Injunction against Commissioner Hamm in his official capacity.

**A. Lt. Pelzer and Limestone officers recently assaulted Mr. Council and knowingly placed him in solitary confinement on false disciplinary charges.**

On October 15, 2023, Mr. Council was assaulted by Limestone correctional officers at the instigation of Warden Streeter and Lt. Pelzer, and is being held in solitary confinement on knowingly fabricated disciplinary charges, including falsely alleging that Mr. Council assaulted an officer. On October 15, 2023, without justification, Officer Parker sprayed Mr. Council with a cell buster pepper spray, an extremely powerful tactical pepper spray commonly used to put down large crowds but not directed at individuals at close range.

In addition, Mr. Council was the victim of three other physical assaults by correctional officers at Limestone in the past year. On December 2, 2022, Officer Brewer sprayed Mr. Council with mace directly in his eyes. On November 28, 2022, Officers Brewer and Mike Jones threw Mr. Council to the floor, cut his clothes off, and placed him in a suicide cell. On September 28, 2022, a CERT team twisted Mr. Council's arm behind his back, handcuffed him and dragged him by an arm and leg across the floor.

These Limestone officers, Lt. Pelzer, Officer Brewer, and others have near constant access to Mr. Council and any interaction could result in an assault with serious or fatal injuries.

These were not the first incidents or the only ADOC officers or employees that attempted to kill Mr. Council. On January 30, 2021, at Donaldson correctional facility, four officers entered Mr. Council's cell, beat him until he was unconscious, and initially left him for dead. Mr. Council was airlifted to UAB hospital and permanently blinded in his left eye.

Mr. Council has repeatedly filed grievances, including to then-Commissioner Dunn, and lawsuits to address the retaliation and violence by Lt. Pelzer and Limestone officers. To date, Lt. Pelzer and other officers have not been disciplined.

**B. Recent threats of violence and attempts to kill Mr. Council and other retaliation by Lt. Pelzer and other Limestone officers, show an urgent and escalating threat to Mr. Council.**

Lt. Pelzer and other Limestone officers have made recent comments demonstrating their clear intent, and attempts, to harm Mr. Council:

- Sometime between May 24, 2023 and June 14, 2023- Lt. Pelzer made a statement to another prisoner that "Robert Earl is the reason Lewis (head of the Crips) can't get out," and "[e]ven if yall killed him I'll make sure nothing happens to yall."

- On June 28, 2023, Lt. Pelzer told another prisoner, “Robert Council posted a live [referring to live stream] and that’s why y’all can’t catch store.” This statement by Lt. Pelzer was made to two different gang members.
- On June 20, 2023, an Officer Charley at Limestone stated to Mr. Council, “What you looking at? That’s why you lost a [sic] eye at West Jefferson.”
- On June 23, 2023, at Limestone, Officer Gilbert and Officer Collins stated, “Fuck that shit. I’m gone start sending their ass out the back gate,” referring to killing prisoners.
- On June 24, 2023, Officer Gilbert stated, referring to Mr. Council and while gritting his teeth, “I can’t wait to catch his ass. Everybody be following him like he somebody.”

**C. Lt. Pelzer’s recent threats against Mr. Council are part of a well-documented pattern of threats and violence by Lt. Pelzer against Mr. Council and friends associated with him.**

Lt. Pelzer’s recent threats of unconstitutional force and retaliation against Mr. Council are part of a well-established pattern. Indeed, Lt. Pelzer has made clear and specific threats against Mr. Council and people associated with him since 2019. On October 29, 2019, the then-Sgt. Pelzer choked prisoner Larry Jones and forced Jones to sign an affidavit under duress. While he was choking Jones, Sgt. Pelzer stated “I want Robert Council....I’m tired of this bastard and all his lawsuits.” Sgt. Pelzer intimidated Jones to sign an affidavit declaring Mr. Council as his enemy.

Mr. Gespass, Mr. Council’s attorney, told ADOC’s Institutional Coordinator, Cheryl Price, in a January 9, 2020 letter, that Sgt. Pelzer “has evidently targeted Mr. Council.” (Gespass letter, January 9, 2020). “Indeed, he has implicitly threatened not just Mr. Council but a friend of his who regularly visits him, Elizabeth Davenport, telling Mr. Council he knows where she lives.” (*Id.*).

There are also multiple, well-documented examples of Lt. Pelzer personally using excessive force against prisoners at Limestone. Lt. Pelzer engaged in excessive force against prisoners in 2019 when he pepper-sprayed Griggs and choked Jones, and in 2023, when he punched Banks in the jaw. Finally, there is also a pattern of Limestone correctional officers using sham disciplinary charges to cover-up incidents of excessive force, retaliate against prisoners, and place them in solitary confinement.

**D. Mr. Council has a well-documented history of engaging in protected activity to expose corruption by Lt. Pelzer and other Limestone officers, provoking their retaliation.**

Mr. Council has engaged in First Amendment protected activity for decades as an organizer and litigant, including going on hunger strikes and filing or helping file multiple lawsuits against Limestone correctional officers. This includes filing or assisting other prisoners to file lawsuits against Lt. Pelzer. In July 2019, Mr. Council assisted prisoner Travis Griggs, AIS 212909, in filing a federal lawsuit against Sgt. Pelzer for using excessive force against Mr. Griggs. On September 28, 2020, Mr. Council filed a federal lawsuit against Sgt. Pelzer and other Limestone officers, including Officer Brewer, Captain McKenzie, and Captain Langford alleging

that they had engaged in retaliation against him for exposing the officers' corruption in running a gambling and extortion racket at Limestone, among other illegal and unconstitutional actions.

More recently, during the period between July and August 2023, Mr. Council engaged in protected activity when he referred five Limestone prisoners, who were victims of correctional officers' use of excessive force, to civil rights attorneys. This included referring Vinessa Banks, AIS 00271892, to a civil rights attorney after Lt. Pelzer punched Banks, breaking his jaw. Limestone staff including Lt. Pelzer knows of and assume that Mr. Council helped these prisoners pursue lawsuits against them.

**E. ADOC officials have recommended transferring Mr. Council away from Limestone, because of concerns about retaliatory violence by Lt. Pelzer and others.**

Since 2019, the ADOC's own internal review boards have recommended that Mr. Council be transferred away from Limestone and Lt. Pelzer for Mr. Council's own safety. In 2019, the ADOC's segregation board recommended that Mr. Council be transferred for his safety to another institution further south. Mr. Gespass raised these same concerns regarding Mr. Council's safety and the need to transfer him to ADOC's institutional coordinator Price in letters on July 10, 2019 and January 9, 2020.

Finally, in October 2023, Mr. Council shared his concerns about the threats he faced with an investigator with the Law Enforcement Services Division, Jesse Pallard. Her notes and reports will substantiate the allegations stated in this letter.

**F. ADOC officials cause Mr. Council to suffer in solitary confinement despite his suffering from anxiety and PTSD.**

Mr. Council suffers from anxiety and PTSD due to the traumatic beatings he has suffered at the hands of ADOC correctional officers over the previous years. Despite this, ADOC officials continue to place Mr. Council in solitary confinement without monitoring his mental health.

ADOC officials have been on notice that continuing to detain a prisoner in solitary confinement who suffers from a serious mental illness violates the Eighth Amendment. *See Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1245 (M.D. Ala. 2017). The *Braggs* court concluded, based on the testimony of "the experts, clinicians who work for ADOC, and even Associate Commissioner Naglich herself," that prisoners who suffer from a serious mental illness "should never be placed in segregation in the absence of extenuating circumstances." *Id.* And, the court noted, "even in extenuating circumstances, decisions regarding the placement should be with the involvement and approval of appropriate mental-health staff, and the prisoners should be moved out of segregation as soon as possible and have access to treatment and monitoring in the meantime." *Id.* at 1247.

**RELIEF REQUESTED**

Mr. Council requests that, within two days, i.e. by Wednesday, November 8, 2023 at 7:00 p.m. ADOC will:

1. transfer Mr. Council away from Limestone to any other ADOC facility;
2. release Mr. Council from solitary confinement; and
3. suspend Lt. Pelzer pending an internal investigation and referral to criminal prosecution by state or federal authorities.
4. Mr. Council also requests that ADOC and official capacity ADOC employees waive formal service and agree to accept service, via email to ADOC's general counsel, of a complaint and motion addressing these matters.

### **PRE-LITIGATION HOLD**

This letter serves as notice that the issues raised in this letter may be the subject of litigation. All documents and other evidence potentially relevant to these issues should be preserved. *See Flurry v. Daimler Chrysler Corp.*, 427 F.3d 939, 945 (11th Cir. 2005). Please take all necessary steps to avoid the destruction of relevant evidence, including the immediate issuance of a litigation hold.

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We hope that you will agree that the concerns raised in this letter are serious issues and should be resolved in the most expeditious and effective way.

Sincerely,

/s/ Andrew Menefee

Andrew Menefee

**MENEFEE LAW**

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*Counsel for Robert Earl Council*

**FW: demand letter, seeking transfer of Robert Earl Council, AIS: 00181418, from Limestone for his protection**

McCarthy, Thomas (DOC) <thomas.mccarthy@doc.alabama.gov>

Wed 11/8/2023 12:27 PM

To: Andrew Menefee <amenefee@menefee-law.com>

 1 attachments (182 KB)

2023.11.06 demand letter Robert Earl Council.pdf;

Andrew,

Thank you for your email and letter. I have reviewed the letter and forwarded your allegations to the proper parties within the Department. I have asked our LESD and OIG to investigate your allegations, including the allegations against members of the security staff. I have also forwarded your allegations, and request for a facility transfer, to our operations and classification divisions. Finally, your representations regarding Mr. Council's medical status has been shared with OHS.

I will update you if I am made aware of a facility transfer involving Mr. Council.

Thanks again.

Tom

**Thomas M. McCarthy**  
**Assistant General Counsel**  
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**From:** Andrew Menefee <[amenefee@menefee-law.com](mailto:amenefee@menefee-law.com)>

**Sent:** Monday, November 6, 2023 6:49:23 PM

**To:** Hamm, John (DOC) <[john.hamm@doc.alabama.gov](mailto:john.hamm@doc.alabama.gov)>; Roberts, MaryColeman (DOC) <[MaryColeman.Roberts@doc.alabama.gov](mailto:MaryColeman.Roberts@doc.alabama.gov)>

**Cc:** [menefeemartin@gmail.com](mailto:menefeemartin@gmail.com) <[menefeemartin@gmail.com](mailto:menefeemartin@gmail.com)>

**Subject:** demand letter, seeking transfer of Robert Earl Council, AIS: 00181418, from Limestone for his protection

Commissioner Hamm and Counsel Roberts,

I'm writing on behalf of my client, Robert Earl Council, currently incarcerated at Limestone. Lt. Jeremy Pelzer currently is threatening my client's life.

Accordingly, we are prepared to file for a temporary restraining order and preliminary injunction. We ask that you please grant the relief we seek by Wednesday, November 8, 2023, at 7:00, p.m.

The relief includes immediate transfer of Mr. Council to another ADOC facility.

Please see attached.

Thank you,

Andrew Menefee

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*Licensed to practice in Alabama, Georgia*

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\*Pursuant to D.C. App. R. 49(c)(3), Mr. Menefee is authorized to provide legal services in the District of Columbia for the purpose of representing clients before a federal court.